

POGREBA FIELD AIRPORT AFFECTED AREA REGULATION

Section 1. General Provisions.

1.1 Authority. This regulation is authorized by the Airport Compatibility Act, Title 67, Chapter 7, Montana Code Annotated 2009, and applicable standards established by 14 Code of Federal Rules and Regulations part 77. The regulation together with the airport affected map and land use classifications for determining change of use shall be known as the Pogreba Field Airport Affected Area Regulation [PFAAAR] and referred to throughout as "regulation."

1.2 Legislative History and Findings. Pogreba Field Three Forks Airport is located within the jurisdictional boundaries and subject to the local government authorities of the City of Three Forks, MT and Gallatin County, MT. On August 17, 2004, the Pogreba Field Joint Airport Zoning Board [PFJAZB] was established by County Resolution No. 2004-11. On November 30, 2005, the PFJAZB was dissolved, and the Pogreba Field Joint Airport Affected Area Regulation Board [PFJAAARB] was formed by County Resolution No. 2005-162 and by Resolution No. 064 05-06 of the City of Three Forks on January 10, 2006. The dissolution of the PFJAZB and establishment of the PFJAAARB was required by changes in the MCA. On June 26, 2007, the City Council of the City of Three Forks adopted Ordinance No. 0300- 2007-2008 thereby making Model Pogreba Field / Three Forks Airport Affected Area Regulations a City Ordinance. On July 8, 2008, by Resolution No. 2008, and on October 25, 2009, by Resolution No. 2009, the PFJAAARB adopted and recommended previous versions of this regulation. This regulation is intended to repeal and supersede such prior versions of this regulation.

1.3 Character of Airport Affected Area. The regulation and airport affected area map have resulted from consideration of the safety of airport users and persons and property in the vicinity of the airport; flying operations conducted or expected to be conducted at the airport; nature of the terrain; future development of the airport; federal aviation administration recommendations for the aeronautical surfaces necessary for safe flying operations. The regulation and airport affected area map, surfaces and zones are based on established airport, aeronautical and aviation engineering principals, accepted industry standards, recommendations, input of the public, recommendations from the City of Three Forks Planning Board and professional planner, review and approval from the PFJAAARB, and in general the FAA standards published at 14 CFR 77.

1.3.1 Flying Operations. General aviation, flight school, historic annual fly-in events, helicopters, emergency transportation, and other visual flying operations. Most of the flying operations are single prop horizontal wing aircraft and infrequently jet aircraft classification. Flying operations are expected to be consistent with past performance.

1.3.2 Airport Plan. The future development of the airport is dependent on many factors including the availability of FAA funding or grants, economic development, local interests in general aviation, aviation tourism, and the success of management and airport operations at Pogreba Field. An Airport Layout Plan has been considered and most recently received conditional approval by the FAA on 01.17.2010. Plans for improving navigation and promoting further public safety include the proposed installation of equipment necessary for a non-precision instrument landing system that would direct air traffic to runway 2 in reduce flying

over the City of Three Forks.

1.3.3 Terrain Considered. Considerations of terrain and existing uses is shown by the exemptions for fences, agricultural use and activities, structures not exceeding 36' in height in the horizontal and conical zones, and unoccupied structures not exceeding 15' in height in the transitional zone when setback 25' from the primary surface.

1.4 Purpose and Intent. The general purpose and intent is to promote public health, safety and general welfare of airport users and persons and property in the airport area. Permit review, required by statute, is for the purpose of identifying, mitigating and preventing creation of potential obstructions or hazards, and identifying, mitigating and preventing enlargement or expansion of existing obstructions or hazards that might increase the risk of harm, injury or death to persons in the air and on the ground and to prevent structural damages, fire and other harmful occurrences in the airport affected area.

Section 2. Definitions.

The definitions in Montana Code Annotated § 67-1-101, and 67-7-101 et seq., and 14 CFR Part 77 are adopted and incorporated by reference. Definitions in this regulation shall be controlling in the event of any conflicts.

Aeronautical Areas. Runways, hangars, aprons, taxi-lanes, parking areas, roads, terminal, tarmac and other areas of the airport property shown on any official airport layout plan or maps for existing and future aviation needs.

Agricultural Activity. Cultivation of the soil, farming, ranching, raising livestock or dry grain crops and all incidental uses and activities shall be exempt from this regulation.

Airport. The Pogreba Field / Three Forks Airport owned by Gallatin County and located in Three Forks, Montana.

Airport Appeals Board. The Gallatin County Airport Board appointed by the governing body that shall hear and decide appeals from the determinations, decisions or orders of the Airport Agent, and shall hear and decide variance requests.

Airport Affected Area. Except areas outside Gallatin County, the airport affected area is the air space above and all the land within the primary, approach, transitional, horizontal and conical zones and surfaces as defined herein and shown on the official airport affected area map prepared by Morrison-Maierle PE attached and incorporated herein.

Airport Affected Area Map. The official airport affected area map prepared by Morrison-Maierle that shows the jurisdiction and application of this regulation. If any land, use, structure, action or activity subject to this regulation is located partially within and partially outside the airport affected area, then only the portion located within the airport affected area shall be subject to this regulation.

Airport Affected Area Permit. As required by MCA 67-7-212, the permit required pursuant to these regulations referred to as Airport Affected Area Permit (AAP), permit or conditional permit.

Airport Agent. Any person designated or appointed with the authority to investigate complaints, interpret the regulation, issue permits, orders or decisions and generally administer the regulation. The City Council of Three Forks shall appoint an Airport Agent who shall have authority within the boundaries of the City of Three Forks. The County Commissioners shall appoint an Airport Agent who shall have authority outside the boundaries of the City of Three Forks. The City and County agent shall not be the same person.

Airport Elevation. The highest point of elevation on the airport's runways based on the North American Vertical Datum of 1988 (NAVD 88) that is 4089 feet above mean sea level (MSL).

Airport Layout Plan (ALP). Any graphic depiction of existing conditions and future proposed development consisting of drawings, each intended to depict specific information about the airport, and explaining important features of the airport.

Airport Owner. Gallatin County.

Area. Any land within any of the airport affected area boundaries shown on the airport affected area map.

Change of Use. Any change of the use of land, including development of structures, activities or actions, such that taken as a whole the use of land would reasonably be viewed as changing the use as described on the Pogreba Field Airport Affected Area Regulation Land Use Classifications For Determining Change of Use that is attached and incorporated by reference.

Electromagnetic Effect. Any interference or impediment to the transmission or quality of navigation or communication signals to or from aircraft, meteorological equipment, navigation equipment, communications equipment, or air traffic control facilities caused by a power source, radio frequency transmitter, or an object or surface that emits, reflects or re-radiates an electromagnetic signal or electrical pulse.

Exemptions. In all surfaces and zones the installation, erection, repair, replacement or construction of fences and fence lines not exceeding ten feet in height and agricultural activities shall be exempt from this regulation. In the conical and horizontal zones -- structures not exceeding 36' in height shall be allowed without a permit. In the transitional surface and zone -- uninhabited structures not exceeding 15' in height above ground, including sheds, storage buildings, garages and other uninhabited structures shall be allowed without a permit provided that a minimum setback of 25' from the primary surface is maintained.

Governing Body. The Gallatin County Board of County Commissioners having charge of the finances and management of the airport is designated as the governing body as per MCA 67-1-101(21) and MCA 67-7-103.

Hazard / Obstruction. Within the airport affected area any structure or use that obstructs the air space required for the flight of aircraft in landing or taking off at the airport or is otherwise hazardous to flight, landing or taking off, navigation, air traffic or airport operations. Obstructions or hazards are used interchangeably and include without limitation, lights, radio or electromagnetic emissions and/ or any other thing, use, actions or activity within the airport affected area that creates or causes unreasonable risks to public safety on the ground or in the air.

Height. The vertical difference measured in feet and inches between the highest point of a structure and the ground where the structure is located.

Height Relative to Airport Elevation. The vertical difference in feet and inches between the highest point of a structure measured above mean sea level and the airport elevation.

Joint Airport Board. The Pogreba Field Joint Airport Affected Area Regulation Board [PFJAAARB] created by Resolution No. 2005-162 of the Board of County Commissioners of Gallatin County on November 30, 2005, and by Resolution No. 064 05-06 of the City of Three Forks on January 10, 2006.

Non-Aeronautical Areas. Airport property, outside of the aeronautical areas that might be suitable for uses as office space for governmental entities.

Nonconforming Structures / Uses. Any structure or use that legally exists at the time these regulations become effective that does not conform to this regulation may continue, however no increase, expansion or intensification of the nonconforming use or structure shall be allowed without compliance with these regulations. A nonconforming structure that is substantially damaged may be reconstructed or replaced without obtaining a variance or permit provided that the degree of nonconformity or hazard is not increased.

Obstruction. See hazard / obstruction herein.

Permit. See airport affected area permit herein.

Person. Any individual person, partnership, corporation, association, limited liability company, professional liability company, government board, agency or department, or other legal entity private or public.

Regulation. The Pogreba Field Airport Area Affected Regulation including all provisions herein, and any definitions, maps or drawings that are expressly incorporated by reference and all of which shall be referred to as this regulation.

Runway. The prepared surface of an airport, suitable for landing or taking off by aircraft, as well as planned extensions documented on the airport layout plan.

Substantial Damage. Damage of EIGHTY (80%) PERCENT or more of any structure from any cause, including natural deterioration or decay, fire, storm or natural causes.

Structure. Any object constructed, erected, maintained, or installed by any person, including but not limited to any buildings, towers, poles, bridges, cell towers, radio antennae, cranes, smoke stacks, earth formations, overhead transmission lines, and any other things manmade.

Structural Penetration. Unless an exemption applies -- whenever any proposed structure or use, change of use, or replacement, rebuild, or substantial alteration, actions or activity (except trees) penetrates any surface or surfaces then permit review for obstructions and hazards shall be required.

Surfaces. The airport imaginary surfaces for existing and planned development of the airport shown on the airport affected area map that include approach, conical, horizontal, primary and transitional surfaces.

Terrain Penetration. Any natural land surface that penetrates into any of the surfaces.

Threshold. The beginning portion of a runway that is available for landing.

Tree. Any naturally growing vegetation deciduous, coniferous or otherwise.

Variance. A variance is required before commencement, construction, erection, installation, enlargement or expansion of any use or structure not in strict conformity with this regulation.

Vicinity Sketch. A non-reduced 8 ½" x 11" copy of a portion of a 7.5 minute USGS Quadrangle Map that shows the location of a proposed structure or land use and identifies the ground elevation at the proposed location. The Vicinity Sketch must include the name of the USGS Map copied, the Township and Range of the area shown, and the horizontal and vertical datums upon which the map is based (typically found in the lower right-hand corner of the map).

Section 3. Surfaces and Zones.

3.1 Surfaces and Zones. A zone is the ground beneath an imaginary surface of the same name. Zones and surfaces shown on the airport affected map establish standards for determining obstructions or hazards to air navigation and have the following characteristics and are defined as stated herein.

3.2 Approach Zone and Approach Surface. The approach zone exists at each end of the runway, beginning at 200 feet from the end of each runway, centered on the extended runway centerline, with an initial width of 500 feet, widening thereafter uniformly to a width of 3,500 feet at a distance of 10,000 feet beyond the end of the primary surface. The approach surface slopes 34 feet outward for each foot upward for a horizontal distance of 10,000 feet.

3.3 Airport Property Area. The land owned by Gallatin County and designated for airport use.

3.4 Conical Zone and Conical Surface. The conical zone commences at the periphery of the horizontal zone and lies below the conical surface. A conical surface slopes 20 feet outward for each foot upward beginning at the periphery of the horizontal zone, for a horizontal distance of 4,000 feet. The conical surface begins at 150 feet above the airport elevation.

3.5 Horizontal Zone and Horizontal Surface. The horizontal zone lies beneath the horizontal surface, which is a plane 150 feet above the established airport elevation, the perimeter of which coincides with the perimeter of the horizontal zone shown on airport affected area map. The horizontal zone does not include the approach and transitional zones.

3.6 Primary Zone and Primary Surface. The primary zone is 500 feet wide, centered on the runway, extending 200 feet from each end of the paved runway. The primary surface is immediately above the primary zone.

3.7 Transitional Zone and Transitional Surface. The transitional zone is immediately below the transitional surface. The transitional surface is perpendicular to the runway centerline and its extension. It begins at the outer periphery of the approach surface and the primary surface and extends upward at a slope of 7 feet horizontally for each foot vertically from the sides of these two surfaces until it intersects the horizontal and conical surfaces.

Section 4. Administration.

4.1 Airport Affected Area Permit. As required by MCA 67-7-212, the permit required pursuant to these regulations referred to as Airport Affected Area Permit (AAP), permit or conditional permit.

4.1.1 Permit Required. Within the airport affected area an Airport Affected Area Permit must be obtained before any person: (1) constructs, erects or installs any structure, including rebuilding, altering, expanding, or enlarging an existing structure, such that the structure exceeds SEVENTY-FIVE (75') FEET in height above natural grade **or** penetrates the height of the imaginary surface where the structure is located; or (2) involves a change in the use of land as defined in this regulation.

4.1.2 Permit Fee. Permit application fee is \$25.00; Variance Application \$100.00; Appeal \$100.00. The Airport Agents shall establish administrative forms for processing permits, variances, complaints, and appeals that must include sufficient information to identify: the owner and adjacent owners; vicinity sketch, site plan or survey locating all existing and proposed uses and structures or changes, alterations, repairs, replacements as applicable; describe all sources of lighting, radio, or electromagnetic emissions or other information reasonably necessary for the Airport Agent to review the application and determine if hazards or obstructions will be created. Permit applications must be executed by the owner before a notary with representations as to the accuracy and truthfulness of the information. No permit fee shall be required for trees.

4.1.3 Permit Criteria. A permit may not be granted that would allow the establishment of

an airport hazard or that would allow a nonconforming use or structure to become a greater hazard to air navigation than it was on the effective date of this regulation. Permits shall be granted unless the Airport Agent finds that the structure or use, change of use, or replacement, rebuild, or substantial alteration, actions or activity would create a hazard or obstruction.

4.1.4 Special Terrain Conditions. In the conical and horizontal zones penetration of an imaginary surface due to existing ground elevation shall not prohibit the proposed structure, use, change of use or replacement, rebuild, or substantial alteration, actions or activity if: (1) no hazard or obstruction is established, enlarged or intensified; or (2) the requirements of a conditional permit would reasonably mitigate against potential hazards or obstructions. (3) Structures not exceeding 36' in height shall be allowed without a permit and shall not constitute a hazard or obstruction in the conical and horizontal zones.

4.1.5 Special Transitional Zone Conditions. In the transitional zone penetration of the imaginary surface due to the height of the proposed structure shall not prohibit the proposed structure, use, change of use or replacement, rebuild, or substantial alteration, actions or activity if: (1) no hazard or obstruction is established, enlarged or intensified; or (2) the requirements of a conditional permit would reasonably mitigate against potential hazards or obstructions. (3) In the transitional surface and zone structures not exceeding 15' height above ground, including sheds, storage buildings, garages and other uninhabited structures or buildings, shall be allowed without a permit provided that setback of 25' from the primary surface is maintained.

4.2 Conditional Permit Approval. In addition to the permit requirements and permit criteria section 4.1, a conditional permit may be granted pursuant to the following criteria.

4.2.1 Conditional Permit. A permit granted pursuant to this regulation may: (1) require the owner of a structure to allow the governing body, at the owner's expense, to install, operate and maintain markers or lights to warn pilots of the presence of a hazard or obstruction; (2) limit or condition any sources of light, radio or electromagnetic emissions; (3) limit or condition hours of operations, activities, actions or uses that might unreasonably interfere with flight, navigation, air traffic or airport operations or cause a hazard or obstruction; or (4) require such other conditions, restrictions or covenants reasonable necessary to promote public health and safety on the ground and / or in the air in the airport affected area.

4.2.2 Conditional Permit Findings of Fact Required. In granting or denying any permit or conditional permit, findings of fact and consideration shall be given to the owner's rights, the number and height of the proposed structures, use and occupancy, and affects or impacts, if any on, public health, safety and general welfare and the general intent and purpose of this regulation.

4.3 Variances. As required by MCA 67-7-303 a variance procedure is provided consistent with the statute as follows.

4.3.1. Variance Required. Any person intending to erect or increase the height of a structure or use property in a manner that is not in accordance with the strict requirements of this regulation must obtain a variance from the Airport Appeals Board. In addition to the information required for a permit application, the variance application must include an explanation of the substantial practical difficulty or unnecessary hardship and any public interests that might be impacted. A variance application must include notice to the Federal Aviation Administrator on FAA Form 7460-1 (or such other updated forms) if required by FAA rules or regulations.

4.3.2. Variance Notice & Hearing. The person requesting the variance must notify all adjacent landowners by FIRST CLASS US MAIL at least TEN (10) DAYS before the Airport Appeals Board public meeting and the notice must include the date, time and place of the public meeting with a copy of the variance application and any sketches, maps, surveys or photographs of other documents that might be submitted at the public meeting. Proof of mailing shall be provided to the Airport Appeals Board prior to the commencement of the scheduled public meeting. Mailing to the last known addresses as shown in the public records of Gallatin County shall be adequate notice. The Airport Appeals Board must conduct the public meeting so as to allow reasonable time for the applicant, opponents and any other public comment, including FAA comments, recommendations or reports if applicable. The Airport Appeals Board must make findings of fact and determine if based on the evidence presented the applicant has met the criteria for the granting of a variance, if not the Airport Appeals Board must make findings of fact and deny the variance.

4.3.3. Variance Criteria. As required by MCA 67-7-303, a variance must be granted if: (1) a literal application or enforcement of this regulation would result in substantial practical difficulty or unnecessary hardship and when the variance would not be contrary to the public interest. (2) A variance must be granted for a nonconforming use when there is no immediate hazard to safe flying operations or to persons and property in the vicinity of the airport and when the noise or vibrations from normal and anticipated normal airport operations would not be likely to cause damage to structures. (3) Conditions may be imposed for granting the variance, including, but not limited to, a requirement the owner of a structure or pay for the installation, operation and maintenance of lights and markers necessary to warn pilots of the presence of a hazard or obstruction with the Gallatin County Airport Appeals Board installing the lights or markers.

4.4 Appeals. An appeal from a decision, determination or order of the Airport Agent must be submitted, in writing, to the Airport Appeals Board, within SIXTY (60) DAYS of the written decision, determination or order of the Airport Agent. Appeals may be filed by the applicant, any aggrieved person, adjacent landowner, or the governing body or its boards, departments or agents and must state with specificity the basis of the appeal and provide a complete record, including documents, photographs, maps, surveys, and transcript of any public hearings. Appeals shall be administered consistent with MCA § 67-7-302(2).

4.5 Enforcement. The Airport Agent is the agent(s) or person(s) appointed or designated by the Gallatin County Commission and City of Three Forks to administer, enforce, interpret, supervise, and administer these regulations and permits. Written notice of a violation must be given by the Airport Agent to the violator, specifying how these regulations have been violated, how the violation can be remedied and setting a reasonable deadline for the correction of the violation, prior to the imposition of a penalty. The penalty provisions of these regulations must also be included in the notice.

4.6 Penalty. As required by MCA 67-7-304, a person who violates this regulation, or condition of any permit or variance, or does not correct a violation, after notification that person is subject to a civil penalty and a criminal penalty.

4.6.1. Civil Penalty. The civil penalty is a fine of \$100 for each day that the violation is not remedied after the Airport Board has determined there is a violation for which a fine should be assessed against the violator, has given its own written notice of the violation to the violator, has held a hearing on the violation and has provided a written determination to the violator that there is a violation.

4.6.2. Criminal Penalty. In addition to or separate from the civil penalty, the County Attorney or City of Three Forks Attorney may file misdemeanor criminal charges for a violation of these regulations. Pursuant to Section 45-2-104, MCA, a person is absolutely liable for a violation of these regulations. Upon conviction a fine of \$500 must be imposed.

4.7 Injunction. Gallatin County or City of Three Forks may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of MCA § 67-7-101 et seq, or this regulation.

Section 5. Marking Structures.

5.1. Marking Nonconforming Structures. If the governing body elects to install, operate and maintain, at the governing body's expense, lights and markers necessary to warn pilots of a nonconforming use the owners of those structures shall allow this activity.

5.2. Marking Structures Conditional Permits. If required by a conditional permit, variance, or decision or determination following an appeal the owner of a structure shall allow the governing body, at the owner's expense, to install, operate and maintain markers or lights to warn pilots of the presence of a hazard or obstruction.

Section 6. Adoption.

6.1 Final Print. This regulation may be copied, distributed, posted in electronic form, printed or published and changes in font, text size, bold, underlining, formatting or color shall not effect or change the intent or meaning. Any emphasis added is simply for illustrative purposes.

6.2. Conflicts With Zoning. In the event of conflict between this regulation and any zoning ordinance or resolution the more stringent limitation or requirement prevails. Any airport permit, approval, decision or determination issued or granted pursuant to this regulation shall not obviate the need for compliance with any with any other City or County ordinances, local zoning, land use, flood plain, waste water or subdivision regulations, or state or federal laws that may apply to the proposed construction, structure, use or change of use.

6.3. Supersedes. This regulation supersedes all previous versions of this regulation.

6.4. Amendments. This regulation and the boundaries of the airport affected area map may be amended or revised whenever the public health, safety and general welfare requires such amendment or as provided in the MCA 67-7-201. Amendments shall made by the governing body following a minimum of at least one public hearing as required by MCA 67-7-201(5) with notice published as provided by MCA 7-1-2121.

6.5. Severability. If a court of competent jurisdiction holds any word, phrase, clause, sentence, paragraph, section, or other part of these regulations invalid, that judgment affects only the part held invalid.

6.6. Effective Date. The effective date that this regulation shall be 30-days after the regulation has been adopted by resolutions of the Joint Airport Board, the City Council of the City of Three Forks, and the County Commissioners and the regulation has been duly recorded with the Clerk of the City of Three Forks and the Clerk and Recorder's Office of Gallatin County.

6.6.1. PFJAAARB Approval. The Pogreba Field Joint Airport Affected Area Regulation Board adopted this Pogreba Field Airport Affected Area Regulation on _____.

6.6.2. City Council Approval. The City Council of the City of Three Forks adopted this Pogreba Field Airport Affected Area Regulation on _____.

6.6.3. City Council Approval. The Board of County Commissioners of Gallatin County adopted this Pogreba Field Airport Affected Area Regulation on _____.

GALLATIN COUNTY COMMISSIONERS

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